

Franchise Tax Board**ANALYSIS OF ORIGINAL BILL**

Author: Villines Analyst: Deborah Barrett Bill Number: AB 2118
Related Bills: See Legislative History Telephone: 845-4301 Introduced Date: February 20, 2008
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: State Agencies Shall Not Adopt Regs That Require Person Or Entity To Use Specific Technology Unless Operational And Proven Effective For More Than 2 Years Or That Would Place Undue Burden On California Business On Annual Basis And Result In Loss Of Jobs

SUMMARY

This bill would prohibit a state agency from adopting regulations that require the use of specific technology:

- unless the technology has been operational and proven effective for more than 2 years, or
- if the technology would result in undue burden to California businesses and significant loss of jobs.

PURPOSE OF THE BILL

According to the author's staff, the purpose of this bill is to prevent the adoption of regulations that would require the use of unproven emerging technologies or would require extraordinary efforts for taxpayers to comply.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2009, and would be operative for any rulemaking provision adopted on or after that date.

POSITION

Pending.

ANALYSIS**FEDERAL/STATE LAW**

Federal law is not relevant here since specific rules under state law govern the adoption, amendment, and repeal of regulations by state agencies.

Board Position:

_____ S	_____ NA	_____ NP
_____ SA	_____ O	_____ NAR
_____ N	_____ OUA	_____ <u>X</u> PENDING

Department Director

Date

Selvi Stanislaus

4/4/08

State agencies are prohibited from issuing or enforcing guidelines, criterion, instructions, standards, or rules of general application unless those guidelines, criterion, instructions, standards, or rules of general application have been adopted as a regulation, approved by the Office of Administrative Law (OAL), and filed with the Secretary of State.

Under state law, OAL reviews all regulations adopted by state agencies, including new regulations, amendments to existing regulations, and repeal of existing regulations, to ensure the regulations are clear and not overly burdensome.

THIS BILL

This bill would prohibit a state agency from adopting a regulation that would do either of the following:

- Require any person or entity to use a specific technology, unless that technology has been operational and proven effective for more than two years.
- Places an undue burden on California businesses on an annual basis and results in significant loss of jobs.

IMPLEMENTATION CONSIDERATIONS

This bill uses terms that are undefined, i.e., "operational," "proven effective," "significant loss of jobs," "new technology," and "undue burden." The absence of definitions to clarify these terms could lead to disputes with taxpayers and would complicate the administration of this bill's provisions.

For a significant loss of jobs to be attributable to a specific regulation, the regulation would have to be adopted to cause the loss of jobs. For new regulations adopted, the author may want to clarify that the regulation is "estimated" to result in a significant loss of jobs, determined by some identified authority.

Under the Administrative Procedures Act, state agencies are already required to assess the economic impact of a proposed rulemaking action on business generally and small businesses specifically. Accordingly, the undue burden standard in this bill's provisions may be duplicative of existing law provisions.

In some instances, legislation may mandate the use of specific technology and require a state agency to adopt implementing regulations. The bill is silent on how that type of statute would be reconciled with the requirements of this bill.

The bill uses the term "annual basis." Because the Franchise Tax Board (FTB) deals in both calendar year and fiscal year filers, it is unclear what period of measurement the author intends to be used to determine "annual basis" for this bill's provisions. Clarification would assist in preventing disputes between taxpayers and FTB.

FISCAL IMPACT

Implementing this bill would not significantly impact department costs.

ECONOMIC IMPACT

This bill would not impact state income tax revenues.

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